

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

---

PAUL STERLING,

Plaintiff,

v.

ORDER  
11-CV-639

MERCANTILE ADJUSTMENT BUREAU, LLC.,

Defendant.

---

---

The above-referenced case was referred to Magistrate Judge Jeremiah J. McCarthy pursuant to 28 U.S.C. §636(b)(1)(B). The initial action involved alleged violations of the Fair Debt Collection Practices Act (“FDCPA”) and the Telephone Consumer Protection Act (“TCPA”). Plaintiff’s claims under the FDCPA were resolved, and both parties moved for summary judgment on the issue of liability under the TCPA. (Dkt. Nos. 34 and 35) On November 22, 2013, Magistrate Judge McCarthy issued a Report and Recommendation recommending that summary judgment be granted with respect to plaintiff on the issue of liability, and denied with respect to defendant. (Dkt. No. 46)

Defendant filed objections to the Report and Recommendation on December 6, 2013. (Dkt. No. 47) In addition, defendant requested, and was granted, leave to file supplemental objections. (Dkt. No. 48-1) Plaintiff filed responses to defendant’s objections and supplemental objections. (Dkt. No. 50)

and 53) Defendant filed a reply on February 14, 2014. (Dkt. No. 51) The Court considered the matter submitted without oral argument.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review, and after reviewing the submissions of the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, defendant's motion for summary judgment dismissing plaintiff's TCPA claims is denied, and plaintiff's motion for summary judgment on liability under the TCPA is granted.

The case is referred back to Magistrate Judge McCarthy for further proceedings.

SO ORDERED.

Richard J. Arcara  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: March 25, 2014

